

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA STATE LOTTERY

In the Matter of
International Wine & Liquor
Lottery Retailer # 100206
St. Paul, MN 55116

FINDINGS OF FACT
CONCLUSIONS, AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on Tuesday, September 9, 1997, at 9:30 a.m. at the offices of the Minnesota State Lottery in Roseville, Minnesota. E. Joseph Newton, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota State Lottery (hereinafter referred to as "the Lottery"). There was no appearance by or on behalf of the Respondent, International Wine & Liquor, 710 South Cleveland Avenue, St. Paul, MN 55116. The record closed upon receipt of an affidavit filed by the Lottery on October 1, 1997.

NOTICE

This Report is a recommendation, not a final decision. The Director of the Minnesota State Lottery will make the final decision after a review of the record. The Director may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Director shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact George R. Andersen, Director, Minnesota State Lottery, 2645 Long Lake Road, Roseville, Minnesota 55113, to ascertain the procedure for filing exceptions or presenting argument.

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STATEMENT OF ISSUE

The issues presented by this case are whether or the Respondent complied with the statute and rules governing retailers selling instant lottery tickets and the terms of its contract by depositing to the credit of the Lottery in a separate designated bank account all monies the Respondent received from the sale of lottery tickets, minus amounts retained as compensation for the sale of tickets and credits for payment of lottery prizes; remitting funds due the Lottery from the sale of lottery tickets; and properly settling

packs of instant tickets as required by the Lottery; and, if not, whether the decision of the Lottery to temporarily suspend the Respondent's contract to sell instant lottery tickets should be affirmed or reversed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Lottery and the Respondent entered into an agreement on July 16, 1996, under which the Respondent was authorized to sell lottery tickets for instant games. The contract was to remain in effect until July 15, 1997, unless it was canceled or suspended. Ex. 1.

2. On June 25, 1997, the Director of the Lottery issued an Order Temporarily Suspending the Contract to Sell Instant Lottery Tickets directed to the Respondent. This Order was personally served on William Kangel, Manager, International Wine & Liquor, 710 South Cleveland Avenue, St. Paul, Minnesota 55116, on June 27, 1997. The Respondent served a timely request for a hearing regarding the suspension of the contract.

3. Pursuant to a Prehearing Order issued on August 1, 1997, the hearing originally scheduled for July 30, 1997, was continued to August 28, 1997, in order to allow time for the Respondent to secure representation of counsel.

4. Pursuant to a Prehearing Order issued on August 7, 1997, the hearing scheduled for August 28, 1997, was again continued to September 9, 1997. The Prehearing Order contained the following paragraph:

Pursuant to Minnesota Rules pt. 1400.6000 (1995), a failure by the Respondent to appear at the above-mentioned Hearing shall constitute a default, permitting the undersigned Administrative Law Judge to take the allegations and the issues set out in the Order Temporarily Suspending the Contract to Sell Instant Lottery Tickets as true and deemed proved without further evidence.

The August 7, 1997, Prehearing Order was served upon both parties by first class mail.

5. The Respondent did not personally appear at the hearing in this matter scheduled for September 9, 1997, or have an appearance made on its behalf. The Respondent did not make any prehearing request for continuance or any other relief. The Respondent's Chairman called legal counsel for the Lottery on the day of the hearing and indicated that he would not appear and that the hearing could be canceled.

6. Because the Respondent failed to appear at the hearing in this matter, the Respondent is in default.

7. Pursuant to Minn. Rules pt. 1400.6000, the allegations contained in the Order Temporarily Suspending the Contract to Sell Instant Lottery Tickets are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Director of the Lottery have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 349A.06, subd. 11 (1996).

2. The Notice of Hearing issued by the Lottery was proper and the Lottery has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Director of the Lottery is empowered to issue lottery retailer contracts pursuant to Minn. Stat. § 349A.02, subd. 3(2) and 349A.06 (1996). The Director is also authorized to adopt rules governing the compensation of lottery retailers and the accounting for and deposit of lottery revenues by lottery retailers. Minn. Stat. §§ 349A.05 and 349A.06, subd. 6 (1996). According to the rules adopted by the Lottery, lottery retailers are entitled to receive a commission of five percent of the price of each ticket sold and are required to “deposit in a separate account in a designated bank, to the credit of the lottery, all money received by the retailer from the sale of lottery tickets, less the amount retained as compensation for the sale of tickets, credit for direct payment of prizes, and money authorized to be retained for payment of prizes.” Minn. R. 7856.4030 and 7856.7010 (1995).

4. Pursuant to the contract entered into by the Respondent and the Lottery, the Respondent agreed, among other things, “to comply with and be bound by the Lottery law [Minnesota Statutes chapter 349A], and all rules, games procedures, instructions and directions” issued by the Director of the Lottery and “to deposit to the credit of the Lottery in a separate account in a designated bank all monies received by the [Respondent] from the sale of lottery tickets, less the amount retained as compensation for the sale of tickets or credit for the direct payment of prizes.” Ex. 1, Sections III and XI. Among the grounds specified in the contract for cancellation of the agreement was the failure of the retailer “to account for proceeds from the sale of lottery tickets.” *Id.*, Section XV(3)(b).

5. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. R. 1400.6000 (1995), the allegations contained in the Order Temporarily Suspending the Contract to Sell Instant Lottery Tickets are hereby taken as true.

6. The Respondent has failed to comply with the terms of its contract with the Lottery and has violated Minn. R. 7856.7010 (1995). The Respondent’s contract is subject to suspension pursuant to Minn. Stat. § 349A.06, subd. 11(b)(2) and (3) and (e) (1996), Minn. R. 7865.6010, subp. 2(C) and (E), and Section XV(3)(b) and (e) of the Respondent’s contract.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Director of the Lottery affirm the temporary suspension of the contract of International Wine & Liquor to sell instant lottery tickets.

Dated: October 8, 1997.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as otherwise provided by law.

Reported: Tape Recorded (one tape).